

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LONNIE WILLIAMS,

Plaintiff,

Case No. 1:07-cv-1011

v

HON. JANET T. NEFF

UNKNOWN JONES, et al.,

Defendants.

_____ /

OPINION

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants Jones Unknown Jones and Unknown Barnes filed a motion for summary judgment on the remaining claim in this case, Plaintiff's Eighth Amendment claim of excessive force claim against them. Defendants argued that Plaintiff failed to state a claim on which relief can be granted, the claim is barred by immunity, and there is no issue as to any material fact entitling Defendants to a judgment as a matter of law. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation recommending that this Court grant Defendants' motion and enter judgment as a matter of law because Plaintiff failed to raise any genuine issue as to any material fact. FED. R. CIV. P. 56(c). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections, approves and adopts the Report and Recommendation as the opinion of this Court, and enters Judgment pursuant to FED. R. CIV. P. 58.

Plaintiff asserts that the Magistrate Judge erred in recommending this Court grant Defendants' motion for summary judgment. Plaintiff states essentially three objections in "Plaintiff's Objections to Report and Recommendation" (Obj.) as follows: (1) Plaintiff objects to the Magistrate Judge's characterization of the facts being uncontroverted (Obj. at 2; Rep. & Rec. at 3); (2) Plaintiff disagrees with the Magistrate Judge's statement that Plaintiff did not suffer any significant injury and also continues to maintain that he was subject to racial discrimination and other threats causing psychological injury (Obj. at 3, 6, 8; Rep. & Rec. at 4); and (3) Plaintiff objects to the Magistrate Judge's characterization of the alleged incident as an assault (Obj. at 5; Rep. & Rec. at 4). Plaintiff suggests that this Court review a video of the alleged assault (Obj. at 9).¹

Plaintiff's objections are without merit. After a thorough review of the record, the Magistrate Judge properly characterized the facts he recited as uncontroverted. Even assuming the truth of Plaintiff's assertions about what the video would show, the Magistrate Judge properly concluded that Plaintiff did not suffer any significant injury rising to the level necessary for an Eighth Amendment excessive force claim. Last, the Magistrate Judge properly characterized the incident as an assault. In short, Plaintiff's objections do not demonstrate error in the Magistrate Judge's recommendation to grant Defendants' motion for summary judgment.

For these reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Opinion would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997).

¹ Although the video is available upon the Court's request, it was not included within the agency record based on the determination that release of the video to Plaintiff would create a security breach by "divulging the limitations and/or capabilities of the fixed camera system" (Df. Exh. 3 [Certification of Agency Record]). This Court is not persuaded that reviewing the video is necessary to resolving Plaintiff's objections.

A Judgment will be entered consistent with this Opinion.

Date: July 6, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

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JUDGMENT

In accordance with the Opinion entered this date:

IT IS HEREBY ORDERED that the Objections (Dkt 28) are DENIED and the Report and Recommendation (Dkt 27) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (Dkt 20) is GRANTED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Date: July 6, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge